

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

MELISSA OSTRANDER, Plaintiff)

v.)

HUSSMANN CORPORATION,
Defendants)

CIVIL ACTION NO. 04-30197-MAP

DEFENDANT, HUSSMAN CORPORATION'S MOTION FOR AN ORDER
COMPELLING NON-PARTY DEPONENT TO COMPLY WITH SUBPOENA
[FED. R. CIV. P. 37(a)]

Now comes the defendant Hussmann Corporation and moves the court for an order compelling a non-party, Pleasant Street Market, 54 Pleasant Street, Westfield, Massachusetts, to comply with the records subpoena served upon it by Hussmann.

In support of this motion, Hussmann states that it issued a summons on January 10, 2005, which was duly served upon the deponent, calling for the scheduled records to be produced on February 14, 2005. On the due date, Pleasant Street's counsel requested an additional two weeks to produce the requested records, up until February 28, 2005 (See Tab A, attached hereto). After the records had not arrived by early March, Hussmann's counsel's office called and was told by Pleasant Street's counsel that some sort of problem had occurred but promised the records would be forwarded right away. Additional calls by counsel's staff the week of March 23rd were not returned. A letter was sent out on March 23, 2004, requesting a return phone call or compliance with the subpoena before April 1st, neither of which has come to pass (See Tab B, attached hereto).

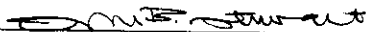
WHEREFORE, Hussman respectfully requests the Court to issue an order compelling Pleasant Street Market produce all subpoenaed documents forthwith.

HUSSMANN CORPORATION, Defendant

By 
JOHN B. STEWART (BBO #551180)
MORIARTY, DONOGHUE & LEJA, P.C.
1331 Main Street
Springfield, MA 01103
(413) 737-4319

CERTIFICATE OF COMPLIANCE

I certify that prior to the filing of this motion I have attempted to confer with counsel representing Pleasant Street Market in good faith to resolve or narrow the issue presented in the above motion in accordance with L.R. 7.1(A)(2) and L.R. 37.1.


JOHN B. STEWART (BBO #551180)
MORIARTY, DONOGHUE & LEJA, P.C.

CERTIFICATE OF SERVICE

I certify that a true copy of the foregoing motion was served upon each other party or counsel of records by mail on April 4, 2005


JOHN B. STEWART (BBO #551180)
MORIARTY, DONOGHUE & LEJA, P.C.

TAB A

ROBINSON
DONOVAN

James H. Tourtelotte, Esq.

jtourtlotte@robinson-donovan.com

February 14, 2005

John B. Stewart, Esquire
Moriarty, Donoghue & Leja, P.C.
1331 Main Street
Springfield, MA 01103

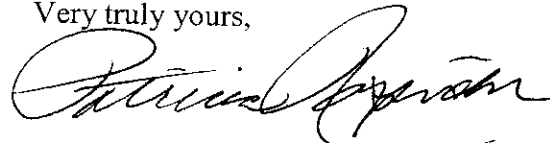
RE: Melissa Ostrander v. Hussman Corp.
US District Court No.: 04-30197-MAP

Dear Attorney Stewart:

Please let this letter confirm that William Barry, President of Pleasant Street Market, has until February 28, 2005 to respond to the deposition subpoena dated January 10, 2005.

Thank you for your courtesy and cooperation in this regard.

Very truly yours,



Patricia M. Rapinchuk

PMR/tar

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RECEIVED FEB 18 2005

TAB B

COPY

MORIARTY, DONOGHUE & LEJA, P.C.

ATTORNEYS AND COUNSELORS AT LAW
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SPRINGFIELD, MASSACHUSETTS 01103-1643
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EDWARD V. LEJA
JOHN B. STEWART
ROBERT F. CONNELLY
JOSHUA E. ABEL

THOMAS J. DONOGHUE
PATRICIA A. BARBALUNGA
JAMES P. MORIARTY (1898-1973)

March 23, 2005

Patricia Rapinchuk

Robinson Donovan
1500 Main Street, 16th Floor
Springfield, MA 01115

Re: Pleasant Street Market Compliance with KOR Subpoena

Dear Pat:

The subpoena called for compliance on February 14th. Your office called and asked for a two week courtesy extension which we were happy to accommodate. After waiting a sufficient period beyond the expiration of the deadline, in early March we called again and were told there was some kind of snaffoo and your office would get us the records right away. Our calls this week have not been able to elicit any promises the documents are coming imminently. Please call me or provide the documents. I will wait until April 1st before asking the court to enforce the subpoena.

Yours very truly,

John B. Stewart

JBS/bh